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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

- - - - - x
In re: : Chapter 11
:
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
:
Debtors. : Jointly Administered
- - - - - x

**DEBTORS' FOURTEENTH OMNIBUS OBJECTION TO CLAIMS
(RECLASSIFICATION OF CERTAIN NON-GOODS 503(B)(9)
CLAIMS TO GENERAL UNSECURED NON-PRIORITY CLAIMS)**

The debtors and debtors in possession in the above-
captioned cases (collectively, the "Debtors")¹, hereby file

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing

the Debtors' Fourteenth Omnibus Objection to Claims (Reclassification of Certain Non-Goods 503(b)(9) Claims to General Unsecured Non-Priority Claims (the "Non-Goods Claims Objection" or the "Objection")), and hereby move this Court, pursuant to sections 105 and 503(b)(9) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Bankruptcy Rule 3007-1, for an order, the proposed form of which is attached hereto as Exhibit A, granting the relief sought by this Objection. In support of the Objection, the Debtors respectfully state as follows:

Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Proper ties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc.(6796), Sky Venture Corp. (0311), PRAHS, Inc.(n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address was 9950 Mayland Drive, Richmond, Virginia 23233 and currently is 4951 Lake Brook Drive, Glen Allen, Virginia 23060.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Objection under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Objection in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are Bankruptcy Code sections 105 and 503(b)(9), Bankruptcy Rule 3007, and Local Bankruptcy Rule 3007-1.

BACKGROUND

2. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

3. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

4. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

5. On November 12, 2008, the Court appointed

Kurtzman Carson Consultants LLC ("KCC") as claims, noticing and balloting agent for the Debtors in these chapter 11 cases pursuant to 28 U.S.C. § 156(c).

6. On November 12, 2008, this Court entered that certain Order Establishing Bar Date for Filing Requests for Payment of Administrative Expense Claims Under Bankruptcy Code Sections 105 and 503(b)(9) and Approving Form, Manner and Sufficiency of Notice of the Bar Date Pursuant to Bankruptcy Rule 9007 (Docket No. 107)(the "503(b)(9) Bar Date Order").

7. Pursuant to the 503(b)(9) Bar Date Order, this Court approved the form and manner of the 503(b)(9) bar date notice, which was attached as Exhibit A to the 503(b)(9) Bar Date Order (the "503(b)(9) Bar Date Notice"). Pursuant to the 503(b)(9) Bar Date Order and the 503(b)(9) Bar Date Notice, the bar date for filing proofs of claim asserting administrative priority claims pursuant to section 503(b)(9) of the Bankruptcy Code was December 19, 2008 (the "503(b)(9) Bar Date").

8. On November 19, 2008, KCC served a copy of the 503(b)(9) Bar Date Notice on all parties who filed notices of appearance pursuant to Bankruptcy Rule 2002, all

of the Debtors' scheduled creditors in these cases, the Debtors' equity holders, and certain other parties (Docket No. 358). In addition, the Debtors published the 503(b)(9) Bar Date Notice in The New York Times (Docket No. 549), The Wall Street Journal (Docket No. 548), and The Richmond Times-Dispatch (Docket No. 547).

9. On January 16, 2009, the Court authorized the Debtors, among other things, to conduct going out of business sales at the Debtors' remaining 567 stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors remaining stores. As of March 8, 2009, the going out of business sales at the Debtors' remaining stores had been completed.

10. On April 1, 2009, this Court entered an Order Establishing Omnibus Objection Procedures and Approving the Form and Manner of Notice of Omnibus Objections (Docket No. 2881)(the "Omnibus Objection Procedures Order")

RELIEF REQUESTED

14. By this Objection, the Debtors seek entry of an order, in substantially the form annexed as Exhibit A, pursuant to Bankruptcy Code sections 105(a) and 503(b)(9) and Bankruptcy Rule 3007, reclassifying each of the seventeen (17) claims identified on Exhibit B allegedly entitled to administrative priority under Bankruptcy Code section 503(b)(9) and asserted against the Debtors (the "Non-Goods Claims") to general unsecured, non-priority claims.

15. For ease of reference, attached as Exhibit B is an alphabetical listing of all claimants whose Non-Goods Claims are included in this Objection (the "Claimants"), with a cross-reference by claim number.

16. At this time, the Debtors have not completed their review of the validity of all claims/expenses filed against their estates, including the Non-Goods Claims. Accordingly, the Non-Goods Claims may be the subject of additional subsequently filed objections. To that end, the Debtors reserve the right to further object to any and all claims, whether or not the subject of this Objection, for allowance, voting, and/or distribution purposes, and on any

other grounds. Furthermore, the Debtors reserve the right to modify, supplement and/or amend this Objection as it pertains to any claim or claimant herein.

BASIS FOR RELIEF REQUESTED

17. Currently, the Debtors are engaged in a thorough review of all claims filed against their estates, including administrative expense claims, to determine the validity of such claims. As part of this process, the Debtors are diligently reviewing claims filed pursuant to Bankruptcy Code section 503(b)(9).

18. After reviewing numerous 503(b)(9) claims, their supporting documentation and the Debtors' books and records, the Debtors have determined that the Non-Goods Claims identified on Exhibit B do not satisfy the requirements of Bankruptcy Code section 503(b)(9).

19. Specifically, the Non-Goods Claims are based on, among other things, payment for: installation services; construction and maintenance services; utility services; advertising services; professional services, including consulting services, legal services, and IT services; customer services; freight charges; litigation; rental obligations for property leased by the Debtors;

employee services; vendor services; employee claims for wages and benefits; and various taxes. However, none of these categories of claims constitute "goods" provided to the Debtors by the Claimants within the 20 days before the Petition Date.

20. Accordingly, the Debtors object to the classification of these Non-Goods Claims as administrative expenses under Bankruptcy Code section 503(b)(9) and request that all such expenses be reclassified as general unsecured, non-priority claims.

APPLICABLE AUTHORITY

I. THE NON-GOODS CLAIMS ARE NOT CLAIMS BASED ON THE SALE OF GOODS THAT QUALIFY FOR ADMINISTRATIVE EXPENSE PRIORITY UNDER § 503(B)(9).

21. Bankruptcy Code section 503(b)(9) provides in pertinent part as follows:

(b) After notice and a hearing, there shall be allowed, administrative expenses, . . . including . . .

(9) the value of any goods received by the debtor within 20 days before the commencement of the case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 U.S.C. § 503(b)(9) (emphasis added).

22. The Fourth Circuit Court of Appeals has repeatedly held that the claimant has the burden of proof on all elements of an administrative expense claim. See, e.g., Ford Motor Credit Co. v. Dobbins, 35 F.3d 860, 866 (4th Cir. 1994) (quoting In re Mid Region Petroleum, Inc., 1 F.3d 1130, 1132 (10th Cir. 1993) ("the party claiming entitlement to administrative expense priority [under § 503(b)] has the burden of proof"); see also In re Wetco Rest. Group, LLC, No. 07-51169, 2008 WL 1848779, *4 (Bankr. W.D. La. Apr. 23, 2008) (the claimant has the "burden to establish that the value of the 20-Day Goods qualifies for administrative expense treatment under section 503(b)(9)").

23. Moreover, in evaluating administrative expense requests, "[t]he presumption in bankruptcy cases is that the debtor's limited resources will be equally distributed among the creditors. Thus, statutory priorities must be narrowly construed." Ford Motor Credit, 35 F.3d at 865 (quoting In re James B. Downing & Co., 94 B.R. 515, 519 (Bankr. N.D. Ill. 1988); see also City of White Plains v. A&S Galleria Real Estate, Inc. (In re Federated Dep't Stores, Inc.), 270 F.3d 994, 1000 (6th Cir. 2001).

24. This Court should therefore interpret section 503(b)(9) narrowly and in accordance with its plain meaning. See Hartford Underwriters Ins. Co. v. Union Planters Bank, 530 U.S. 1, 6, (2000) "Congress says in a statute is what it means and means in a statute what it says there." (internal quotations omitted); In re NVR, LP, 189 F.3d 442, 457 (4th Cir. 1999) (holding that the Bankruptcy Code must be interpreted in accordance with its plain meaning using the ordinary understanding of words); In re Amireh, 2008 WL 52706, *4 (Bankr. E.D. Va. 2008) ("The court will not expand the reach of the statute beyond the language chosen by Congress.").

25. Bankruptcy Code section 503(b)(9) plainly provides that only claims for the value of "goods" received by the debtor within the 20 days prior to the Petition Date are entitled to administrative priority treatment. 11 U.S.C. § 503(b)(9) (emphasis added). As documented below, the Non-Goods Claims identified on Exhibit B and C are based on something other than the sale of "goods" to the Debtors in the ordinary course of business and, therefore, should be reclassified as general unsecured non-priority claims.

**A. Section 503(B)(9) Is Limited To The Value Of
"Goods" Sold To The Debtors, Not Services
Provided.**

26. Consistent with the plain language of the statute, allowed administrative expenses under section 503(b)(9) should only be claims arising from a claimant's sale and delivery of goods to the Debtors, not from the claimant providing services. See Brown & Cole Stores, LLC v. Associated Grocers, Inc. (In re Brown & Cole Stores, LLC), 375 B.R. 873, 878 (B.A.P. 9th Cir. 2007) ("By the plain terms of the statute, a vendor's right to assert an administrative claim is limited [in that] the vendor must have provided goods (not services)"); In re Goody's Family Clothing, Inc., 401 B.R. 131, 135 (Bankr. D. Del. 2009) ("[B]ased upon the distinction between 'goods' and 'services' throughout in the Bankruptcy Code, a claim for an administrative expense under section 503(b)(9) cannot be a claim for services provided."); In re Samaritan Alliance, LLC, No. 07-50735, 2008 Bankr. LEXIS 1830 at *6-7 (Bankr. E.D. Ky June 20, 2008) (finding section 503(b)(9) inapplicable because claimant provided what was "more properly characterized as a 'service.'"). As one court explained:

§ 503(b)(9) administrative expense priority extends only to the value of goods received by the debtor in the ordinary course of its business within 20 days before the bankruptcy case. It does not extend to the value of the services rendered to a debtor during this 20 day time frame. Nor does it extend to the value of goods that a debtor may have received in this time frame if such goods were not received in the ordinary course of the debtor's business.

In re Plastech Engineered Prods., 394 B.R. 197, 151 (Bankr. E.D. Mich. 2008) (emphases in original).

27. This distinction between goods and services is supported by the fact that in some places the Bankruptcy Code uses the word "goods" and the word "services" separately, see, e.g., 11 U.S.C. §§ 522(d)(3), 524(k)(3)(F), 546(c)(1) ("goods"); 11 U.S.C. §§ 503((b)(4), (5), 326(a), 327(a), 330(a)(1)(A) ("services"), and in other instances the phrase "goods or services". See, e.g., 11 U.S.C. § 101(4A) ("The term 'bankruptcy assistance' means any goods or services sold or otherwise provided" (emphasis added)).²

² Other references include but are not limited to, sections 101(49) ("goods . . . or services"), 507(a)(4)(B) (two references to "goods or services"), 523(a)(2)(C)(i)(I) ("goods or services"), 523(a)(2)(C)(iI)(II) (two references to "goods or services"), 547(a)(2) ("goods [or] services"), and 1104(c)(2) ("goods [or] services").

28. In light of Congress' use of the words "good" and "services", it is clear that Congress distinguished between "goods" and "services." The Supreme Court recognizes, when Congress referenced one, but not the other, the missing term must have been intentionally omitted. See Gozlon-Peretz v. U.S., 498 U.S. 395, 404 (1991) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."). Therefore, "goods", as used in section 503(b)(9), must not include "services".

B. The Term "Goods" In Section 503(b)(9) Should Be Construed In Conformity With The Definition Of "Goods" In The UCC.

29. Although the term "goods" is not defined in the Bankruptcy Code, it must be construed narrowly and consistent with Congressional intent. See Ron Pair Enter., 489 U.S. at 242 (reasoning that statutes should be interpreted based on their plain meaning and in accordance with Congressional intent); see also Ford Motor Credit Co. v. Dobbins, 35 F.3d at 865 (holding that statutory priorities under the Bankruptcy Code must be narrowly

construed); In re Federated Dep't Stores, Inc., 270 F.3d at 1000 (noting that administrative expense claims under section 503(b) should be strictly construed). The Debtors submit that the proper meaning of "goods" is that meaning found in section 2-105 of the Uniform Commercial Code (the "UCC").

30. The UCC defines "goods", in pertinent part, as "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid . . . and things in action" UCC § 2-105(1).³ Interpreting the term "goods" contained in section 503(b)(9) in conformity with the UCC's definition of "goods" is supported by the limited legislative history of section 503(b)(9).

31. Specifically, section 503(b)(9) was enacted as part of section 1227 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), by which Congress sought to amend the provisions of the Bankruptcy Code that addressed reclamation claims. See BAPCPA,

³ Virginia has adopted the UCC's definition of "goods." See Va. Code Ann. §8.2-105 (2008).

section 1227; see also 11 U.S.C. §§ 546(c) & 503(b)(9); Kenneth N. Klee, Chapter 11 Business Reorganizations: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 - Business Bankruptcy Amendments, Course No. SK092 ALI-ABA Course of Study Materials (2005)(section 503(b)(9) "appears to be intended to allow certain sellers that do not properly seek reclamation in accordance with section 546(c) to have an administrative expense claim for the value of such goods."). As this Court is well aware, the right to make a reclamation claim is grounded in UCC section 2-702. See Matter of Adventist Living Centers, Inc., 52 F.3d 159, 162 n.1 (7th Cir. 1995) ("The right to reclamation arises under § 2-702 of the U.C.C. That right is both protected and limited by 11 U.S.C. § 546"); see also In re Coast Trading Co., Inc., 744 F.2d 686, 689 (9th Cir. 1984); In re Dana Corp., 367 B.R. 409, 414 (Bankr. S.D.N.Y. 2007); In re Georgetown Steel Company, LLC, 318 B.R. 336, 339 (Bankr. D.S.C. 2004).

32. Consequently, to the extent Congressional intent may be discerned, the legislative history supports limiting section 503(b)(9) to apply only to those claims for the value of "goods" (as defined in the UCC) that could

have been, but were not, subject to a valid reclamation claim. Thus, the scant legislative history that exists supports the conclusion that section 503(b)(9) was intended to apply only to a sale of "goods" as the term is used in the UCC.

33. Furthermore, since the enactment of section 503(b)(9), a number of courts have looked to the UCC to determine the meaning of "goods." See In re Goody's Family Clothing Inc., 401 B.R. at 134 ("Use of the UCC Article 2's definition of "goods" in interpreting section 503(b)(9) is suggested in a leading treatise and has been adopted by bankruptcy courts examining this issue. Given the near unanimous nationwide adoption of Article 2 of the UCC, the Court concludes that the term "goods" in section 503(b)(9) conforms with the meaning given in U.C.C. § 2-105(1); "goods" are something that is "moveable.") (citing In re Plastech Engineered Prods., 397 B.R. 828, 836 (Bankr. E.D. Mich. 2008) (adopting UCC Article 2 definition of goods for 503(b)(9) claims); see also In re Samaritan Alliance, LLC, 2008 WL 2520107, at *3 (Bankr. E.D. Ky. 2008) (same); In re Deer, No. 06-02460, 2008 WL 723982, **1-2 (Bankr. S.D. Miss. June 14, 2007) (adopting UCC Article 9 definition of

goods for 503(b)(9) claims); 4 Collier on Bankruptcy ¶ 503.16[1] (15th ed. rev. 2008) ("Goods is not defined in the Code and so the definition used in Article 2 of the UCC is likely to be used").

34. Additionally, in other contexts, Courts have interpreted the meaning of words in the Bankruptcy Code with reference to the UCC. See In re Price, __ F.3d __, 2009 WL 975796, *3 (4th Cir. 2009) (relying on North Carolina law, which adopted the UCC, to define the Bankruptcy Code's use of "purchase money security interest"); In re Ellingsen MacLean Oil Co., Inc., 834 F.2d 599, 605 (6th Cir. 1987) (relying on UCC to supply the definition for "good faith" contained in 11 U.S.C. § 364(e)); Haywin Textile Prods., Inc. v. Bill's Dollar Stores, Inc. (In re Bill's Dollar Stores, Inc.), 164 B.R. 471, 474 (Bankr. D. Del. 1994) (adopting UCC's definition of the term "receipt" because the Bankruptcy Code does not define the term and the right of reclamation is derived from the UCC).

35. Accordingly, for the reasons set forth herein, the definition of "goods" contained in UCC Article 2 should be used to interpret section 503(b)(9).

C. The Non-Goods Claims Are Based On Services And Other Non-Goods.

36. As noted above, each of the Non-Goods Claims falls into a category that, on its face, appears not to be "goods". Courts addressing these issues have reinforced this conclusion. Specifically, Courts have concluded that the following categories of the Non-Goods Claims constitute something other than "goods" as that term is used in the UCC:

- (1) utility services. See In re Samaritan Alliance, LLC, 2008 Bankr. LEXIS 1830 at *6-7 (holding that utility company supplies a service and not a good under section 503(b)(9)); see also 11 U.S.C. § 366 (characterizing utilities as providing services and specifically stating that a "utility may not alter, refuse, or discontinue service" on account of a "debt owed by the debtor to such utility for service rendered before [the petition date]);
- (2) advertising services. See In re Deer, 2007 Bankr. LEXIS 4676, *5 (Bankr. S.D. Miss. June 14, 2007) (holding that sale of advertising is not a "good" under the UCC);
- (3) professional services, including consulting services, legal services, and IT services. See R.J. Longo Const. Co., Inc. v. Transit America, Inc., 921 F.Supp. 1295, 1309-10 (D.N.J. 1996) holding that the UCC does not apply to fees for professional services because

they are not "goods"); Snyder v. ISC Alloys, Ltd., 772 F.Supp. 244, 252-53 (W.D. PA. 1991) (same);

- (4) freight charges. See In re CFLC, Inc., 166 F.3d 1012, 1015 (9th Cir. 1999) (holding that contract for shipping was not a transaction for the sale of "goods"); and,
- (5) litigation claims. C.f. U.S. Test, Inc. v. NDE Environmental Corp., 196 F.3d 1376, 1383 (Fed. Cir. 1999) (holding that the term "goods" in the UCC does not include commercial tort claims).

37. Moreover, section 503(b), as well as other sections of the Bankruptcy Code, specifically differentiates between the following categories of claims and "goods":

- (1) employee claims for wages and benefits. See 11 U.S.C. § 503(b)(1)(A) (describing post-petition work performed by employees as "services"); see also 11 U.S.C. § 507(a)(5)(A) (describing contributions to an employee benefit plan as being made on account of "services rendered");
- (2) taxes. See 11 U.S.C. § 1104(c)(2) (distinguishing between "goods, services, [and] taxes");
- (3) customer claims. See, generally, 11 U.S.C. § 507(a)(7) (describing the relationship between the debtor and its customers as one by which individuals "purchase, lease, or rent[] property, or purchase [] services . . ." and not by

which individuals sell goods to the debtor);

- (4) rental obligations for property leased by the Debtors. See 11 U.S.C. § 365(d)(3); 130 CONG. REC. S8887, S8894-95 (daily ed. June 29, 1984) (remarks of Senator Hatch) (describing background of section 365(d)(3) of the Code) ("These payments include rent due the landlord and common area charges which are paid by all the tenants according to the amount of space they lease. In this situation, the landlord is forced to provide current services-the use of its property, utilities, security, and other services") (emphasis added); accord In re Best Products Co., Inc., 206 B.R. 404, 407 (Bankr. E.D. Va. 1997) ("Congress enacted § 365(d)(3) to guarantee that landlords would not be placed at a disadvantage for providing post-petition services to the debtor.") (emphasis added); In re Stone Barn Manhattan LLC, 398 B.R. 359,361 (Bankr. S.D.N.Y. 2008) (describing landlords as service providers).

38. Because Congress was aware of these services and other categories of non-goods and expressly referred to many of them in the same section of the Bankruptcy Code, it is clear that Congress intended to exclude these services and other categories of non-goods from the sale of "goods" specifically referred to in section 503(b)(9). See, e.g., Gozlon-Peretz v. U.S., 498 U.S. 395, 404 (1991) (holding that where Congress includes particular language in one

section of a statute but omits it in another section of the same statute, it is presumed that Congress acts intentionally and purposefully). Therefore, such claims should be reclassified as general unsecured non-priority claims.

D. Various Non-Goods Claims Are Predominantly Based on Services Rendered And Not On The Sale Of Goods.

39. Any Non-Good Claim that is based on a transaction that may in part include "goods" should also be reclassified because the underlying claim arose from a mixed transactions that was predominantly based on services rendered rather than the sale of "goods."

40. Specifically, in determining whether a mixed transaction is a sale of goods, rather than the rendering of services, courts look to the predominant purpose of the transaction; that is, "whether the contract primarily concerns the furnishing of goods or the rendering of services." Princess Cruises, Inc. v. General Elec. Co., 143 F.3d 828, 833 (4th Cir. 1998). As explained by the Fourth Circuit:

[t]he test for inclusion or exclusion is not whether [the transactions] are mixed but, granting that they are mixed, whether their

predominant factor, their thrust, their purpose, reasonably stated, is the rendition of service, with goods incidentally involved (e.g., contract with artist for painting) or is a transaction of sale, with labor incidentally involved

Id., (quoting Bonebrake v. Cox, 499 F.2d 951 (8th Cir. 1974)).

41. In order to discern the predominant purpose of a transaction, courts consider the following factors: "(1) the language of the contract, (2) the nature of the business of the supplier, and (3) the intrinsic worth of the materials." Id.

42. Various Non-Goods claimants filed 503(b)(9) claims based on the installation of equipment; the construction and maintenance of buildings; and the shipment of products to the Debtors for resale in the Debtors' retail stores. The transactions underlying these claims are in the nature of rendering services, not selling goods. Indeed, Courts have held that transactions similar to these Non-Goods Claims were predominantly for services rendered, and not for "goods" sold under the predominant purpose test. See Princess Cruises, Inc. v. General Elec. Co., 143 F.3d 828, 833 (4th Cir. 1998) (holding that contract for installation, repairs, and maintenance is not governed by

UCC); BMC Industries, Inc. v. Barth Industries, Inc., 160 F.3d 1322, 1331 n.15 (11th Cir. 1998) ("Although construction contracts typically involve materials that qualify as goods (such as concrete or roofing tiles, for example), the services element of such contracts is usually held to be dominant."); Imperial Woodworking Co. v. Christian Bernard Stores Corp., 1985 WL 2712, *5 (N.D. Ill. 1985) ("The UCC does not expand the concept of sale of goods to include a construction contract even though goods are thereby furnished and incorporated into a structure."); In re CFLC, Inc., 166 F.3d 1012, 1015 (9th Cir. 1999) (holding that contract for shipping was not a transaction for the sale of "goods"). As such, these Non-Goods Claims involving mixed transactions are not sales of goods under the UCC and, thus, not entitled to administrative expense priority under Bankruptcy Code section 503(b)(9).

II. THE NON-GOODS CLAIMS SHOULD BE RECLASSIFIED.

43. Bankruptcy Code section 105 provides in pertinent part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

44. In order for the Debtors to efficiently and expeditiously craft a comprehensive plan of liquidation, it is essential for the Debtors to establish the proper liabilities asserted against them. Indeed, it is even more critical that the Debtors confirm the administrative liabilities that can be properly asserted against the Debtors' estates. In order to achieve the imperative of finality required by the claims process, the Debtors request that the Non-Goods Claims be reclassified at this time to general unsecured non-priority claims.

RESERVATION OF RIGHTS

45. As noted above, the Debtors reserve their rights to file objections to the Non-Goods Claims at a later time on any grounds that bankruptcy or non-bankruptcy law permits. The Debtors likewise reserve the right to modify, supplement and/or amend this Objection as it pertains to any claim or claimant herein.

NOTICE AND PROCEDURE

46. Notice of this Objection has been provided to all claimants with claims that are the subject to this Objection as identified on Exhibit B and C, and to other parties-in-interest in accordance with the Court's Order

Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management and Administrative Procedures (Docket No. 130) (the "Case Management Order").

47. Furthermore, the Debtors submit that the following methods of service upon the Claimants should be deemed by the Court to constitute due and sufficient service of this Objection: (a) service in accordance with Bankruptcy Rules 3007, 7004, and 9006; (b) to the extent counsel for a Claimant is not known to the Debtors, by first class mail, postage prepaid, on the signatory of the Claimant's proof of claim form or other representative identified in the proof of claim form or any attachment thereto at least 30 days before the hearing date; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the Claimant's behalf in the Debtors' bankruptcy cases at least 30 days before the hearing date. The Debtors are serving the Claimant with this Objection and the Exhibit(s) on which the Claimant's claim is listed.

48. To the extent any Claimant timely files and properly serves a response to this Objection by 4:00 p.m.

on July 16, 2009 as required by the Case Management Order and under applicable law, and the parties are unable to otherwise resolve the Objection, the Debtors request that the Court conduct a status conference with respect to any such responding claimant at 11:00 a.m. on July 23, 2009 and thereafter schedule the matter for a future hearing as to the merits of this Objection to such Non-Goods claim. However, to the extent any Claimant fails to timely file and properly serve a response to this Objection as required by the Case Management Order and applicable law, the Debtors request that the Court enter an order, substantially in the form attached hereto as Exhibit A, reclassifying as a general unsecured non-priority claim in the same amount as the asserted Non-Goods Claim.

**COMPLIANCE WITH BANKRUPTCY RULE 3007 AND
THE OMNIBUS OBJECTION PROCEDURES ORDER**

49. This Objection complies with Bankruptcy Rule 3007(e). Additionally, the Debtors submit that this Objection is filed in accordance the Omnibus Objection Procedures Order.

WAIVER OF MEMORANDUM OF LAW

50. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion, the Debtors request that the requirement that all motions be accompanied by a written memorandum of law be waived.

NO PRIOR RELIEF

51. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors request the Court to enter the Order sustaining this Objection and granting such other and further relief as the Court deems appropriate.

Dated: Richmond, Virginia SKADDEN, ARPS, SLATE, MEAGHER &
June 18, 2009 FLOM, LLP
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- and -

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Counsel for Debtors and Debtors
in Possession

EXHIBIT A

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Counsel to the Debtors and
Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

- - - - - x
In re: : Chapter 11
:
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
:
Debtors. : Jointly Administered
- - - - - x

**ORDER SUSTAINING DEBTORS' FOURTEENTH
OMNIBUS OBJECTION TO CLAIMS (RECLASSIFICATION
OF CERTAIN NON-GOODS 503(B)(9) CLAIMS TO
GENERAL UNSECURED NON-PRIORITY CLAIMS)**

THIS MATTER having come before the Court on the

Debtors' Fourteenth Omnibus Objection to Claims

(Reclassification of Certain Non-Goods 503(b)(9) Claims

to General Unsecured Non-Priority Claims (the "Non-Goods Claims Objection" or the "Objection"), which requested, among other things, that the claims specifically identified on Exhibit B attached to the Objection be reclassified as general unsecured non-priority claims for those reasons set forth in the Objection; and it appearing that due and proper notice and service of the Objection as set forth therein was good and sufficient and that no other further notice or service of the Objection need be given; and it further appearing that no response was timely filed or properly served by the Claimants being affected by this Order; and it appearing that the relief requested on the Objection is in the best interest of the Debtors, their estates and creditors and other parties-in-interest; and after due deliberation thereon good and sufficient cause exists for the granting of the relief as set forth herein,

IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT:

1. The Objection is GRANTED.
2. The Claims identified on Exhibit A - Non-Goods Claims as attached hereto and incorporated herein, are reclassified as general unsecured non-priority claims.

3. The Debtors' rights to amend, modify, or supplement the Objection, to file additional objections to the Non-Goods Claims (filed or not) that have been or may be asserted against the Debtors, and to seek reduction of any Claim to the extent such Claim has been paid, are preserved.

Dated: Richmond, Virginia
July _____, 2009

HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Counsel to the Debtors
and Debtors in Possession

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I
hereby certify that the foregoing proposed order has
been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley
Douglas M. Foley

In re: Circuit City Stores, Inc, et al.
Case No. 08-35653 (KRH)

Fourteenth Omnibus Objection to Claims

Exhibit B - Claimants and Related Claims Subject To Fourteenth Omnibus Objection to Claims

Claim Holder	Claim	Exhibit
AQUAPERFECT INC	480	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
BEAUMONT ENTERPRISE	834	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
BOSTON FIXTURES LLC	1483	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
COLUMBUS PRODUCTIONS INC	1069	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
DAILY CAMERA	1082	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
DIGITAL MEDIA SOLUTIONS INC	1429	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
ELECTRONIC PARTS UNLIMITED INC	158	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
FOXS CLEANERS	1043	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
HOUSTON CHRONICLE	829	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
I O MAGIC	188	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
J & F MANUFACTURING INC	622	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
J&B ELECTRONICS	461	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
PRIORITY CARE INC	798	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
PRIVACY & INFORMATION MGMT SER	1458	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
STANDARD COFFEE SERVICE	1075	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
STANDARD COFFEE SERVICE	1180	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY
UNITED RADIO INC	1844	EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY

EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY

CLAIM TO BE MODIFIED	CLAIM AS DOCKETED*	CLAIM AS MODIFIED
<p>Claim: 480 Date Filed: 12/03/2008 Docketed Total: \$569.70 Filing Creditor Name and Address: AQUAPERFECT INC 2061 N MORLEY MOBERLY, MO 65270</p>	<p>Claim Holder Name and Address AQUAPERFECT INC 2061 N MORLEY MOBERLY, MO 65270</p> <p>Docketed Total: \$569.70</p> <p><u>Case Number</u> <u>503(b)(9)</u> <u>Unsecured</u> 569.70</p>	<p>Modified Total: \$569.70</p> <p><u>Case Number</u> <u>503(b)(9)</u> <u>Unsecured</u> \$569.70</p>
<p>Claim: 834 Date Filed: 12/15/2008 Docketed Total: \$9,618.17 Filing Creditor Name and Address: BEAUMONT ENTERPRISE 801 TEXAS AVE HOUSTON, TX 77002</p>	<p>Claim Holder Name and Address BEAUMONT ENTERPRISE 801 TEXAS AVE HOUSTON, TX 77002</p> <p>Docketed Total: \$9,618.17</p> <p><u>Case Number</u> <u>503(b)(9)</u> <u>Unsecured</u> 9,618.17</p>	<p>Modified Total: \$9,618.17</p> <p><u>Case Number</u> <u>503(b)(9)</u> <u>Unsecured</u> \$9,618.17</p>
<p>Claim: 1483 Date Filed: 12/16/2008 Docketed Total: \$570,468.36 Filing Creditor Name and Address: BOSTON FIXTURES LLC 79 BROOK ST NEW BEDFORD, MA 02746</p>	<p>Claim Holder Name and Address BOSTON FIXTURES LLC 79 BROOK ST NEW BEDFORD, MA 02746</p> <p>Docketed Total: \$570,468.36</p> <p><u>Case Number</u> <u>503(b)(9)</u> <u>Unsecured</u> 570,468.36</p>	<p>Modified Total: \$570,468.36</p> <p><u>Case Number</u> <u>503(b)(9)</u> <u>Unsecured</u> \$570,468.36</p>
<p>Claim: 1069 Date Filed: 12/19/2008 Docketed Total: \$143,420.91 Filing Creditor Name and Address: COLUMBUS PRODUCTIONS INC 4580 CARGO DR COLUMBUS, GA 31907-1958</p>	<p>Claim Holder Name and Address COLUMBUS PRODUCTIONS INC 4580 CARGO DR COLUMBUS, GA 31907-1958</p> <p>Docketed Total: \$143,420.91</p> <p><u>Case Number</u> <u>503(b)(9)</u> <u>Unsecured</u> 143,420.91</p>	<p>Modified Total: \$143,420.91</p> <p><u>Case Number</u> <u>503(b)(9)</u> <u>Unsecured</u> \$143,420.91</p>

* "UNL" denotes an unliquidated claim.

EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY

CLAIM TO BE MODIFIED	CLAIM AS DOCKETED*	CLAIM AS MODIFIED
<p>Claim: 1082 Date Filed: 12/19/2008 Docketed Total: \$3,816.66 Filing Creditor Name and Address: DAILY CAMERA PO BOX 591 BOULDER, CO 80306-0591</p>	<p>Claim Holder Name and Address DAILY CAMERA PO BOX 591 BOULDER, CO 80306-0591</p> <p>Docketed Total: \$3,816.66</p> <p><u>Case Number</u> 503(b)(9) <u>Unsecured</u> 3,816.66</p>	<p>Modified Total: \$3,816.66</p> <p><u>Case Number</u> 503(b)(9) <u>Unsecured</u> \$3,816.66</p>
<p>Claim: 1429 Date Filed: 12/19/2008 Docketed Total: \$3,770.70 Filing Creditor Name and Address: DIGITAL MEDIA SOLUTIONS INC 707 E WELLESLEY AVE SPOKANE, WA 99207</p>	<p>Claim Holder Name and Address DIGITAL MEDIA SOLUTIONS INC 707 E WELLESLEY AVE SPOKANE, WA 99207</p> <p>Docketed Total: \$3,770.70</p> <p><u>Case Number</u> 503(b)(9) <u>Unsecured</u> 3,770.70</p>	<p>Modified Total: \$3,770.70</p> <p><u>Case Number</u> 503(b)(9) <u>Unsecured</u> \$3,770.70</p>
<p>Claim: 158 Date Filed: 12/01/2008 Docketed Total: \$4,001.80 Filing Creditor Name and Address: ELECTRONIC PARTS UNLIMITED INC 2629 US HWY 19 HOLIDAY, FL 34691</p>	<p>Claim Holder Name and Address ELECTRONIC PARTS UNLIMITED INC 2629 US HWY 19 HOLIDAY, FL 34691</p> <p>Docketed Total: \$4,001.80</p> <p><u>Case Number</u> 503(b)(9) <u>Unsecured</u> 4,001.80</p>	<p>Modified Total: \$4,001.80</p> <p><u>Case Number</u> 503(b)(9) <u>Unsecured</u> \$4,001.80</p>
<p>Claim: 1043 Date Filed: 12/09/2008 Docketed Total: \$2,800.00 Filing Creditor Name and Address: FOXES CLEANERS 1102 W MAIN ST MARION, IL 62959</p>	<p>Claim Holder Name and Address FOXES CLEANERS 1102 W MAIN ST MARION, IL 62959</p> <p>Docketed Total: \$2,800.00</p> <p><u>Case Number</u> 503(b)(9) <u>Unsecured</u> 2,800.00</p>	<p>Modified Total: \$2,800.00</p> <p><u>Case Number</u> 503(b)(9) <u>Unsecured</u> \$2,800.00</p>

* "UNL" denotes an unliquidated claim.

EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY

CLAIM TO BE MODIFIED	CLAIM AS DOCKETED*	CLAIM AS MODIFIED
<p>Claim: 829</p> <p>Date Filed: 12/15/2008</p> <p>Docketed Total: \$190,253.75</p> <p>Filing Creditor Name and Address:</p> <p>HOUSTON CHRONICLE</p> <p>801 TEXAS AVE</p> <p>HOUSTON, TX 77002</p>	<p>Claim Holder Name and Address</p> <p>HOUSTON CHRONICLE</p> <p>801 TEXAS AVE</p> <p>HOUSTON, TX 77002</p> <p>Docketed Total: \$190,253.75</p> <p><u>Case Number</u> 503(b)(9) Unsecured 190,253.75</p>	<p>Modified Total: \$190,253.75</p> <p><u>Case Number</u> 503(b)(9) Unsecured \$190,253.75</p>
<p>Claim: 188</p> <p>Date Filed: 12/05/2008</p> <p>Docketed Total: \$60,630.23</p> <p>Filing Creditor Name and Address:</p> <p>I O MAGIC</p> <p>4 MARCONI</p> <p>IRVINE, CA 92618</p>	<p>Claim Holder Name and Address</p> <p>I O MAGIC</p> <p>4 MARCONI</p> <p>IRVINE, CA 92618</p> <p>Docketed Total: \$60,630.23</p> <p><u>Case Number</u> 503(b)(9) Unsecured 60,630.23</p>	<p>Modified Total: \$60,630.23</p> <p><u>Case Number</u> 503(b)(9) Unsecured \$60,630.23</p>
<p>Claim: 622</p> <p>Date Filed: 12/08/2008</p> <p>Docketed Total: \$438,704.37</p> <p>Filing Creditor Name and Address:</p> <p>J & F MANUFACTURING INC</p> <p>104 46 DUNKIRK ST</p> <p>JAMAICA, NY 11412</p>	<p>Claim Holder Name and Address</p> <p>J & F MANUFACTURING INC</p> <p>104 46 DUNKIRK ST</p> <p>JAMAICA, NY 11412</p> <p>Docketed Total: \$438,704.37</p> <p><u>Case Number</u> 503(b)(9) Unsecured 438,704.37</p>	<p>Modified Total: \$438,704.37</p> <p><u>Case Number</u> 503(b)(9) Unsecured \$438,704.37</p>
<p>Claim: 461</p> <p>Date Filed: 12/01/2008</p> <p>Docketed Total: \$300.00</p> <p>Filing Creditor Name and Address:</p> <p>J&B ELECTRONICS</p> <p>725 KNOX BLVD</p> <p>RADCLIFF, KY 40160</p>	<p>Claim Holder Name and Address</p> <p>J&B ELECTRONICS</p> <p>725 KNOX BLVD</p> <p>RADCLIFF, KY 40160</p> <p>Docketed Total: \$300.00</p> <p><u>Case Number</u> 503(b)(9) Unsecured 300.00</p>	<p>Modified Total: \$300.00</p> <p><u>Case Number</u> 503(b)(9) Unsecured \$300.00</p>

* "UNL" denotes an unliquidated claim.

EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY

CLAIM TO BE MODIFIED	CLAIM AS DOCKETED*	CLAIM AS MODIFIED
<p>Claim: 798 Date Filed: 12/11/2008 Docketed Total: \$40.00 Filing Creditor Name and Address: PRIORITY CARE INC 3010 WESTLAKE RD ERIE, PA 16505</p>	<p>Claim Holder Name and Address PRIORITY CARE INC 3010 WESTLAKE RD ERIE, PA 16505</p> <p>Docketed Total: \$40.00</p> <p><u>Case Number</u> 503(b)(9) Unsecured 40.00</p>	<p>Modified Total: \$40.00</p> <p><u>Case Number</u> 503(b)(9) Unsecured \$40.00</p>
<p>Claim: 1458 Date Filed: 12/16/2008 Docketed Total: \$1,425.60 Filing Creditor Name and Address: PRIVACY & INFORMATION MGMT SER 4355 COBB PKY STE J 280 ATLANTA, GA 30339</p>	<p>Claim Holder Name and Address PRIVACY & INFORMATION MGMT SER 4355 COBB PKY STE J 280 ATLANTA, GA 30339</p> <p>Docketed Total: \$1,425.60</p> <p><u>Case Number</u> 503(b)(9) Unsecured 1,425.60</p>	<p>Modified Total: \$1,425.60</p> <p><u>Case Number</u> 503(b)(9) Unsecured \$1,425.60</p>
<p>Claim: 1180 Date Filed: 12/15/2008 Docketed Total: \$166.12 Filing Creditor Name and Address: STANDARD COFFEE SERVICE PO BOX 4836 FLORENCE, SC 29501</p>	<p>Claim Holder Name and Address STANDARD COFFEE SERVICE PO BOX 4836 FLORENCE, SC 29501</p> <p>Docketed Total: \$166.12</p> <p><u>Case Number</u> 503(b)(9) Unsecured 166.12</p>	<p>Modified Total: \$166.12</p> <p><u>Case Number</u> 503(b)(9) Unsecured \$166.12</p>
<p>Claim: 1075 Date Filed: 12/15/2008 Docketed Total: \$90.90 Filing Creditor Name and Address: STANDARD COFFEE SERVICE PO BOX 62291 NEW ORLEANS, LA 70162</p>	<p>Claim Holder Name and Address STANDARD COFFEE SERVICE PO BOX 62291 NEW ORLEANS, LA 70162</p> <p>Docketed Total: \$90.90</p> <p><u>Case Number</u> 503(b)(9) Unsecured 90.90</p>	<p>Modified Total: \$90.90</p> <p><u>Case Number</u> 503(b)(9) Unsecured \$90.90</p>

* "UNL" denotes an unliquidated claim.

EXHIBIT C - 503(b)(9) NON-GOODS TO MODIFY

[illegible]

* "UNL" denotes an unliquidated claim.